



PART A

EMPLOYEE INFORMATION

FAMILY AND MEDICAL LEAVE GUIDELINES

When you, as an employee, or the covered family member of an employee, have a serious health condition, it is often a very stressful situation for you. It can be a challenge for you to keep track of the individuals you are to contact at work regarding the situation and what needs to be done to have time off of work excused while dealing with illness-related issues at home.

Notification Requirements for Emergency and Non-Emergency Situations:

- You, the employee, must notify both your immediate supervisor and the Human Resources/Payroll designee of the pending leave **at least 30 calendar days prior to the start of the leave when the leave is foreseeable**. Your leave request may be denied or the start of the leave may be delayed if you do not give proper notice and do not provide a completed "FMLA Medical Certification by Health Care Provider" form within a reasonable period of time; usually 15 calendar days after the documentation is requested by the Human Resources/Payroll designee.
- **In the event of an emergency, you must notify both your immediate supervisor and the Human Resources/Payroll designee as soon as possible prior to the leave.** If it is not possible to make such notification prior to this leave, notification must be made within two working days of your return to work. Leave time will not be approved until all required documentation (both Part B and Part C) has been received by Human Resources/Payroll.

MILWAUKEE COUNTY POLICY – FEDERAL AND STATE FMLA LAWS

May 8, 2005

The Wisconsin Family and Medical Leave Law went into effect April 26, 1988. The Federal Family and Medical Leave Act went into effect August 5, 1993. The **purpose** of the laws is to provide unpaid leave to eligible employees for specific reasons and to protect those employees' jobs and certain benefits while on leave. Substitution of paid leave may be allowed (state law) or required (federal law). The purpose of this policy is to comply with the FMLA laws.

1. HOW TO DETERMINE IF AN EMPLOYEE IS ELIGIBLE FOR FMLA:

	<u>Federal</u>	<u>State</u>
<i>Employee:</i>	1,250 hours worked over previous 12 months from date leave begins* (include overtime worked, no paid or unpaid leave time).	1,000 hours paid (including working, vacation, sick allowance, personal, and holiday hours) within 52 weeks prior to request.
	Must be employed by the County for 12 months prior to date leave begins (need not be consecutive).	Must be employed for 52 consecutive weeks, including layoff (need not be immediately prior to date of request).
	*Need not re-qualify each time more intermittent leave is needed in the same calendar year (January-December).	

2. WHAT AMOUNT OF FMLA TIME OFF IS AN EMPLOYEE ENTITLED TO:

	<u>Federal</u> * (January-December – calendar year—one exception)	<u>State</u> ** (January-December - calendar year)
<i>Total of 12 weeks (40 hours or 20 hours)</i>	<ul style="list-style-type: none">◆ Weeks/within 12 months of birth or placement of a child for adoption or foster care and to care for the newborn, adopted, or foster child◆ Weeks/calendar year for an employee who is unable to work because of a serious health condition or for a covered family member who has a serious health condition	<ul style="list-style-type: none">◆ 6 weeks for birth or adoption - not foster care)◆ 2 weeks for an employee who is unable to work because of a serious health condition◆ 2 weeks for a covered family member, including a foster child who has a serious health condition

Marital status is irrelevant when there is a birth or adoption.

* Under the federal FMLA, an employee may take all 12 weeks for one purpose in one calendar year (January through December).

**Under the state FMLA, an employee may not take all 10 weeks for one purpose.

Under federal law, if spouses are employees of the County, the combined total amount of leave they may take is limited to a total of 12 weeks for birth, adoption, foster care, or to care for sick parents.

Employees are entitled to take federal FMLA leave for birth or adoption or placement of a child for foster care within one year after the birth, adoption, or foster care placement.

Under state FMLA, leave to care for a newborn child or for a newly placed child for purposes of adoption must commence within 16 weeks before or after the birth or placement of a child for purposes of adoption. If two births or two adoptions occur in the same calendar year, under state FMLA law, the employee is entitled to 12 weeks of leave (6 + 6).

Under the federal and state FMLA, leave may be taken prior to the birth of a child or placement of a child for adoption or foster care (federal law only) if the employee's absence from work is required for the placement to proceed.

Under both federal and state law, there is no medical certification needed for a FMLA leave to care for a newborn or newly placed child (federal: adoption, foster) (state: adoption only).

Twelve weeks of FMLA leave under federal law runs concurrently with FMLA leave under state law and leave under County civil service rules, County ordinances, and union contracts. See Milwaukee County General Ordinances 17.18 general and (4) and Milwaukee County Civil Service Rule VIII, Section 3 (1) and (1)(g) and sections 2.22 Sick Leave and 2.24 of the union contract between DC 48 and the County for additional benefits. **Injury pay and worker's compensation is counted against the employee's FMLA federal and state leave entitlement if the employee is qualified for FMLA leave.**

3. **INTERMITTENT LEAVE (NON-CONTINUOUS INCREMENTS):** FMLA leave taken in separate blocks of time due to a single qualifying reason. Efforts should be made by employees to not unduly disrupt the County's operations. Intermittent leave is scheduled.

Federal

- ◆ None unless medically necessary*
If the County agrees, the employee may have intermittent or reduced leave for birth, adoption, or foster care placement
- ◆ An employee does not have to establish eligibility with each leave/absence in the same calendar year.

State

- ◆ Allowed if medically necessary including reduced hours – should not unduly disrupt the County's operations
- ◆ Partial absence leave due to birth or adoption allowed (should not unduly disrupt the County's operations)

* For planned medical treatment, the employee taking FMLA leave must make a reasonable effort to schedule treatment so as to not unduly disrupt the operations of the County. Advance notice and schedule of leave dates and times are required – schedule should be sufficiently definite.

Examples: medical appointments, chemotherapy, full-time to part-time during period of recovery. Need medical certification indicating the necessity of intermittent leave or reduced leave schedule due to serious health condition.

A medically necessary (serious health condition) request for intermittent leave or a reduced leave schedule does not require the County's agreement. Included are those times scheduled for planned medical treatment and recovery from treatment for a serious health condition. This includes part time or reduced work schedules. The shortest increment allowed in other situations must be allowed for time off under the FMLA. The County may assign an employee to another position that might better allow for intermittent leave. The County may transfer a DC 48 employee temporarily to an alternative job with equivalent pay and benefits that accommodate recurring periods of FMLA intermittent leave better than the employee's regular position.

Medical certification indicating the necessity of intermittent leave or reduced work schedule leave due to a serious health condition is needed. Intermittent/reduced schedule leave may be taken when medically necessary to care for a seriously ill family member or because of the employee's serious health condition.

4. WHO ARE COVERED FAMILY MEMBERS:

	<u>Federal</u>	<u>State</u>
<i>Parent:</i>	biological, adoptive, in loco parentis to employee (need no legal or biological relationship) (No in-laws)	natural, foster, adoptive, step, legal guardian (includes in-laws) (no in loco parentis)
<i>Child:</i>	biological, adopted, foster, step, legal ward, child of a person standing in loco parentis under 18 or over 18 and "incapable of self care*" because of a mental or physical disability**	natural, adopted, foster, step, legal ward under 18 or over 18 and is unable to care for him/herself because of a serious health condition
<i>Spouse:</i>	legal husband or wife, common law spouse if recognized	legal husband or wife, common law spouse if recognized

*Incapable of self-care:

requires active assistance or supervision to provide daily self care, unable to perform three or more activities of daily living: bathing, dressing, cooking, eating, shopping, paying bills, using phones, taking public transportation.

**Mental or physical disability:

physical or mental impairment that substantially limits one or more of an individual's major life activities (walking, speaking, breathing, seeing, hearing, caring for oneself, working, etc.).

5. DEFINITIONS:

Health care provider under Wisconsin FMLA includes: nurse, chiropractor, physical therapist, certified occupational therapist, dentist, physician, physician's assistant, podiatrist, occupational therapist, occupational therapy assistant, respiratory care practitioner, dietitian, optometrist, pharmacist, acupuncturist, psychologist, social worker, marriage and family therapist or professional counselor, speech-language pathologist, audiologist, massage therapist, body worker, and Christian Science Practitioner.

Health care provider under federal FMLA includes: podiatrist, nurse practitioner, midwives, Christian Science practitioners, optometrist, psychologist, physician's assistant, physical therapist, physician, clinical psychologist, chiropractor, clinical social worker.

A serious health condition under Wisconsin FMLA defines a serious health condition as a disabling physical or mental illness, injury, impairment or condition involving either (1) in-patient care in a hospital, nursing home, or hospice or (2) outpatient care that requires continuing treatment or supervision by a health care provider (at least two visits to a health care provider which must be direct, continuous and firsthand). Disabling -- incapacitation or inability to pursue

an occupation due to physical or mental impairment if employed; not employed; serious health condition is a physical or mental impairment that interferes with normal daily functions.

A serious health condition under federal FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves:

- ◆ inpatient care in a hospital plus any period of incapacity or subsequent treatment in connection with inpatient care, or
- ◆ a continuing treatment by a health care provider including periods of incapacity for more than three consecutive calendar days and subsequent treatment or periods of incapacity relating to same condition involving: treatment two or more times by a health care provider, or nurse, physical therapist, or other referred to by health care provider or treatment by a health care provider on at least one occasion which results in continuing treatment, or
- ◆ periods of incapacity due to pregnancy (must be unable to perform essential functions), need not be more than three consecutive calendar days, or
- ◆ periods of incapacity for a chronic serious health condition which requires periodic visits for treatment by a health care provider over an extended period and which may cause episodic rather than a continuing period of incapacity, e.g., asthma, diabetes, epilepsy. Certification may be required every 30 days for permanent or long-term incapacity for which treatment may not be effective. Need not be receiving active treatment by a health care provider: Alzheimer's, severe stroke, terminal stages of a disease with a chronic serious health condition. Certification may be requested every 30 days unless the health care provider's original certification is for a longer period (e.g. 3 months), or
- ◆ to receive multiple treatments for a condition which would result in incapacitation of more than 3 days if not treated: cancer (chemotherapy), severe arthritis (physical therapy), kidney disease (dialysis).

Seeing a health care provider once with no continuing treatment is not a serious health condition. Generally, a common cold or the flu is not a serious health condition. However, if the definition of a serious health condition is met, both a cold and the flu may be a serious health condition.

Family leave is allowed to care for both the physical and psychological care and arrangement of third party care (nursing home, home care nurse). The employee's presence must be beneficial to the family member who has a serious health condition (including holding the patient's hand). The family member must be unable to carry on their daily life's activities (working, school, etc.)

Medical leave is allowed under the FMLA if the employee is unable to perform the essential functions of his/her position. An employee cannot be forced to work in a light duty position when the employee's health care provider has not released the employee to return to work. An employee on FMLA leave may be able to work a second job even though an employee is eligible for FMLA for his/her County job. However, see MCCR VIII Section 2 (2)(b). **In order to receive a FMLA leave, an employee must be eligible for FMLA and make a timely request. Additionally, a health care provider must certify that the employee has a serious health condition, that time off from work is medically necessary, and that the employee cannot perform the essential functions of his/her job.**

6. SUBSTITUTION OF PAID LEAVE:

	<u>Federal</u>	<u>State</u>
<i>Leave:</i>	Unpaid – The County is not required to provide paid sick leave where not normally provided	Unpaid – The employee has the sole right to substitute any kind of paid leave, including sick leave.
<i>Substitution Of Leave:</i>	Employee may request; the County may require/force an employee to take paid leave but not comp time. Employee off due to serious health condition of covered family member may take sick leave under MCCR VIII, Section 3 (1)(g), which is different than MCGO 17.18 (4)	Yes – any kind of paid leave (totally the employee's option).

The County may not force an employee to take other paid leave if an employee or a covered family member has a serious health condition and the employee has sick leave available and the employee wants to take sick leave in accordance with civil service rules/County ordinances.

The County will not:

- ◆ discipline an employee (including the filing of written charges for discharge) for taking time off under the FMLA, or count a FMLA leave under “No Fault” attendance policies, or
- ◆ deny a DC 48 employee or a non-represented employee the Floating Holiday under DC 48's contract, section 2.21 (8) or sec.17.17 (4) of the ordinances respectively, or refuse to hire or promote an employee because the employee took a FMLA leave, or
- ◆ use the taking of FMLA leave as a reason to take any adverse employment action against an employee who took a FMLA leave.

7. WHAT AN EMPLOYEE IS REQUIRED TO DO:

Advance Notice and Medical Certification:

<u>Federal</u>	<u>State</u>
◆ 30-day advance notice when the need is foreseeable	◆ reasonable and practicable notice
◆ notice “as soon as practicable”* when the need is not foreseeable	◆ for emergencies, no notice is required
◆ sufficient information for the County to understand that FMLA is needed	

- ♦ timely notice (two business days) after returning to work that leave was FMLA leave when the County was not made aware that employee was absent for FMLA reasons

* At least verbal notice to the County within one or two business days of learning of the need to take FMLA leave. It is the County's policy not to grant FMLA requests that are not timely under federal and state FMLA laws.

Medical Certification required: The County must allow 15 days for the employee to submit medical certification (original not a copy) to the human resources manager or his/her designee. If it is not received in 15 days, the County may delay the taking of a FMLA leave or may grant leave subject to receipt of certification. If 30 days notice is not provided by the employee prior to the FMLA leave, then certification should be provided before leave begins. The County can require a second opinion. The County cannot use the same health care provider on a regular basis for second opinions. A second opinion is paid for by the County. The medical certification must include a date when the serious health condition began, probable duration of serious health condition, appropriate medical facts known by health care provider, a statement the employee cannot perform the essential functions of the job or the employee is needed to care for an eligible family member and date(s) of the treatment. If necessary, because the original health care provider's opinion (the employee's) and the County's designated health care provider in a second opinion have differed, the County may obtain a third opinion. The third health care provider **must be** approved jointly by the County and the employee and this third opinion shall be final and binding. The third opinion is done at the County's expense. Re-certification may be requested every 30 days for a chronic condition. However, the County may not request re-certification until after 30 days has passed from the end of leave date previously specified by a health care provider unless 1) the circumstances described by the previous certification have changed significantly (e.g., the severity of the condition, the duration or frequency of absences); or 2) the County receives information casting doubt upon the employee's stated reason for the absence; or 3) the employee requests a leave extension. The County's health care provider (not the County) acting on behalf of the County may contact the employee's health care provider for clarification once permission of the employee is obtained.

The County may contact an employee's health care provider to determine information on the certification if it is not legible but may not go further than that. Only original medical certification forms should be accepted by the County.

The County may not request medical certification for a FMLA family leave due to the birth, placement of a child for foster care (federal law only), or adoption.

8. WHAT ARE THE COUNTY'S RESPONSIBILITIES?

The County must inform the employee in writing:

1. That the leave will be counted against the employee's 12-month entitlement under the FMLA.
2. If and when the employee must provide medical certification.
3. Deadline and notice of consequences for failing to provide certification.

4. Call-in requirements.

5. Generally, the County will accept a Certification – Return to Work statement from the employee's health care provider that the employee is able to return to work and return the employee to work after a FMLA leave. A fitness for duty examination may be required, if the County has information that indicates the employee may not be able to perform the duties of his/her position.

Under federal regulations, the County must inform an employee if the leave is approved within 2 business days from the date of the request and the approval "may be subject to medical certification." If the County does not tell the employee that s/he is not eligible, the County may later inform an employee that s/he was eligible and deduct the leave time from the federal and state FMLA leave allotment. The County may retroactively count time off as FMLA leave time. The County should provide notice of FMLA within 2 business days after an employee returns to work if the employee's leave was of an emergency nature. However, **case law allows the County to make an after-the-fact designation of FMLA leave.**

It is the County's right and obligation to determine whether leave is FMLA eligible. The County can force an employee to take FMLA leave.

An employee cannot collect unemployment compensation while on FMLA.

9. JOB BENEFITS AND PROTECTION (restore to the same level of benefits before the leave)

Although under the FMLA an employee is not entitled to the accrual of additional benefits or seniority that would have occurred during the period of leave, an employee on FMLA leave does accrue hours of service during periods of paid leave. An employee must be restored to an equivalent position with equivalent benefits, pay and other terms and conditions of employment upon return to work after a FMLA leave. An employee may not be denied health insurance upon his/her return to work. Full benefits must be immediately restored with no waiting period, exclusion of pre-existing conditions, etc. If an employee fails to pay the employee portion of health insurance coverage and it expires, the County cannot wait until an open enrollment period to sign up the employee. The County must give 15 days notice that coverage will lapse. If notice is not provided, the County is the insurer until coverage is reinstated. The County may pay the employee portion of premiums for health insurance if the employee fails to do so. The County may then recover those employee premiums paid by the County to maintain an employee under a group health plan during a leave whether the employee returns to work or not. If the employee pays the employee portion of premiums for health insurance, but does not return to work at the end of the leave period for reasons other than continuation of a serious health condition or other circumstances beyond the control of the employee, **the County may recover the County's premiums paid for the employee's health insurance coverage.** Benefits continue under the same conditions that applied before a FMLA leave commenced. If the employee has a leave under the FMLA without pay, the employee's seniority does not increase during the leave for members of TEAMCO and FNHP. For other represented and non-represented employees, seniority continues to accrue. Under the FMLA, benefits do not continue to accrue during a leave. The County will provide benefits after an employee returns from an unpaid leave under the FMLA which accrue during the unpaid leave pursuant to union contracts, civil service rules, and County ordinances.

10. MISCELLANEOUS

Notices (posters) stating the employees' rights under the FMLA and the County's policies must be posted in one or more conspicuous places where employees are likely to see the posters.

11. PAYROLL CODES

09 – excused time – **paid** out of sick allowance, includes FMLA time paid out of sick allowance

81 – unpaid leave of absence – FMLA

21 – unpaid leave of absence – non-FMLA

88 – accumulator code – all FMLA time used (both paid and unpaid) – added up under other earnings

There is no payroll code that indicates what paid time is FMLA other than 09. There are forms that are used by departments that indicate what paid time is FMLA.

12. RELIEF

A complaint may be filed with the state Equal Rights Division within 30 days of an alleged violation. Under the federal FMLA, a complaint may be filed with the Department of Labor. A civil action under federal law must normally be brought within two years of the last event constituting a violation for which relief is sought. DOL will investigate, resolve the case, or bring an action in federal court. The state will investigate a complaint and provide an administrative hearing. An employee must exhaust administrative proceedings/remedies. Employers have 10 days to respond after a notice indicates that the employee has filed a complaint. An employee or the Secretary of Labor may file a cause of action in federal court within 2 years or 3 years if there is a willful violation.

State remedy: leave time, reinstatement, back pay, benefits up to 2 years, costs, reasonable actual attorney fees. Decisions are rendered within 30 days of the filing of the complaint. An employee has 10 days to appeal to the circuit court after a hearing on the merits of the case.

Federal remedies: lost wages, overtime, salary or employment benefits, actual monetary losses (e.g., cost of substitute care), prejudgment interest, possible liquidated damages (double the amount of monetary loss) but not if the Secretary of Labor obtains an injunction prohibiting any further violations of the FMLA. An employee may recover reasonable attorney's fees and costs, employment, reinstatement, promotion.